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Measures to eliminate international terrorism

Letter dated 3 August 2005 from the Chairman of the Sixth Committee addressed to the President of the General Assembly

As I informed you in my letter of 7 July 2005, I convened informal consultations of the Sixth Committee from 25 to 29 July 2005, on the outstanding issues concerning the draft comprehensive convention on international terrorism. Following those consultations, the Vice-Chairman of the Sixth Committee and coordinator for that convention, Carlos Fernando Díaz Paniagua of Costa Rica, prepared a brief report of the proceedings (see annex).

It would be appreciated if this letter, together with the letter of the Vice-Chairman and its attachments, could be circulated as a document of the fifty-ninth session of the General Assembly, under agenda item 148, "Measures to eliminate international terrorism".

(*Signed*) Mohamed **Bennouna**
Chairman of the Sixth Committee

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Annex to the letter dated 3 August 2005 from the Chairman of the Sixth Committee addressed to the President of the General Assembly

Letter dated 3 August 2005 from the Vice-Chairman of the Sixth Committee addressed to the Chairman of the Sixth Committee

I am writing to you in my capacity as coordinator of the informal consultations on the draft comprehensive convention on international terrorism, to present my report of the proceedings of the informal consultations of the Sixth Committee, convened by you from 25 to 29 July 2005. As you noted in your opening remarks on 25 July 2005, the objective of these consultations was to provide delegations with a further opportunity to continue discussions on the pending issues relating to the draft comprehensive convention, exploring ways and means of finalizing it.

The discussions held during the informal consultations were both open and substantive. In this respect, I would like to express my gratitude to you for convening the consultations. The support and leadership you provided in convening the consultations, and throughout the entire negotiation process, have proved invaluable.

Having coordinated the week-long discussions, I am personally confident that we will be able to achieve a positive result during the sixtieth session of the General Assembly, as suggested by the Secretary-General. As I noted in my previous report (A/60/37, annex II, sect. B), it should be emphasized that our mandate is to draft a technical, legal, criminal law instrument that would facilitate police and judicial cooperation in matters of extradition and mutual assistance and not to draft a political definition of terrorism. The essential elements for a possible definition of terrorism contained in the report of the High-level Panel on Threats, Challenges and Change (A/59/565 and Corr.1) and the reports of the Secretary-General are already adequately reflected in the text of the draft convention. Indeed, the definition of the offence contained in the current draft uses precise technical, legal language more suitable for a criminal law instrument than the language used in the report of the High-level Panel.

As I announced on 29 July 2005, I have prepared a brief report of the informal consultations (see appendix I). In addition, as a result of the discussions held during the informal consultations and bilateral contacts, I have come to the conclusion that future negotiations would be facilitated by a consolidated text of the entire instrument. For this reason, I am also attaching to this letter a consolidated text of the draft comprehensive convention on international terrorism (see appendix II). It is my sincere hope that this consolidated draft will assist further discussions and serve as the basis for an agreement in the near future.

(*Signed*) Carlos Fernando Díaz Paniagua
Vice-Chairman of the Sixth Committee
Coordinator of the informal consultations on the draft comprehensive convention on international terrorism

Appendix I

Report of the coordinator on the results of the informal consultations on a draft comprehensive convention on international terrorism, held from 25 to 29 July 2005

Introduction

From 25 to 29 July 2005, pursuant to a request made by interested delegations, the Chairman of the Sixth Committee convened informal consultations to address the outstanding issues relating to the draft comprehensive convention on international terrorism. As coordinator for that convention, I had the honour to chair those consultations, open to all delegations, from 25 to 28 July. I also held informal contacts with interested delegations during that period.

The basic texts of reference during the consultations were those contained in annexes I to IV of the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996,[a] as well as two informal proposals circulated during the current consultations relating to a new preambular paragraph and paragraph 2 of article 18, respectively.

As has been our practice, we worked under the traditional rules of multilateral law-making negotiation, that is, that all proposals remained on the table until withdrawn by their sponsors and that "nothing is agreed until everything is agreed".

During the general exchange of views, delegations emphasized that the moment was ripe to overcome political differences and to show flexibility in the negotiations, so as to finalize the text of a comprehensive convention on international terrorism. Some delegations stressed that the comprehensive convention would constitute a valuable addition to the legal framework already established through the 13 existing counter-terrorism instruments.

Some other delegations noted the need for distinguishing acts of terrorism from the legitimate struggle of peoples for self-determination. In addition, a suggestion was made to include the concept of State terrorism in the definition of terrorism.

Some delegations suggested that a compromise might be reached by including a clear statement on self-determination in the preamble and adopting the text of article 18 as proposed by the former coordinator. Other delegations expressed support for the text of article 18 as proposed by the Organization of the Islamic Conference (OIC).

Additional preambular paragraph

Following bilateral consultations, at the second meeting, I suggested the addition of the following language, based on operative paragraph 15 of General Assembly resolution 46/51 of 9 December 1991, to the preamble:

> "Reaffirming that nothing in this Convention shall in any way prejudice the right to self-determination, freedom and independence, as derived from the Charter of the United Nations, of peoples forcibly deprived of that right or the

right of these peoples to struggle to this end in conformity with international law."

Delegations welcomed the new text as a basis for further discussions. It was pointed out that, while the language was based on previously agreed texts, it should be re-examined in light of its proposed inclusion in a legally binding instrument. It was also suggested to redraft the text as a positive restatement of the right to self-determination, instead of as a saving clause. Furthermore, it was proposed to add a reference to the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[b] as had been done in the relevant paragraph of General Assembly resolution 46/51.

Several delegations indicated their preference for using new language in the preamble to facilitate a consensus on the convention and, in particular, on article 18 as proposed by the previous coordinator. Other delegations, while welcoming the gist of the proposed preambular paragraph, were of the view that such an important provision should rather be included in the operative part of the draft convention. Some delegations noted that the proposed preambular paragraph would clarify the reference to "peoples" in paragraph 1 of article 18, which had been tentatively agreed upon in 2001.

On 27 July, after bilateral contacts with interested delegations, I circulated the following revised version of the text, taking into account the comments made by delegations at the second and third meetings:

> "Reaffirming that, in accordance with the Charter of the United Nations and with the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[b] all peoples have the right to self-determination, freedom and independence; and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the above-mentioned Declaration."

In commenting on this text, some delegations reiterated their view that the addition of a preambular paragraph on the right to self-determination, as part of a package including the text of article 18 proposed by the former coordinator, could form the basis of an agreement on the final text of the draft comprehensive convention. Several delegations stressed that the inclusion of such language in the preamble represented a significant concession, and could only be agreed upon as part of such a package. They preferred this approach to reopening the operative paragraphs, which, in their view, had been largely agreed in principle. These delegations expressed, however, reservations on the content of the proposed preambular paragraph, including, among others, objections to the references to the Declaration and to the words "struggle" and "forcibly deprived".

Other delegations expressed the view that, although they favoured the inclusion of the revised preambular paragraph, it was insufficient to form the basis of a final agreement on the draft convention. According to these delegations, article 18 remained the main point of contention. In this regard, they reiterated their support for the text proposed by the OIC. With respect to the drafting of the revised preambular paragraph, these delegations expressed a preference for placing the provision in an operative paragraph, as a saving clause.

On the last day of the consultations, 29 July 2005, after further bilateral contacts and taking fully into account the comments made during the informal consultations, I suggested the following text for the preamble:

> "Reaffirming that, in accordance with the Charter of the United Nations, the International Covenant on Civil and Political Rights,[c] the International Covenant on Economic, Social and Cultural Rights,[c] and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations,[b] all peoples have the right to self-determination, freedom and independence; and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the above-mentioned Declaration."

In light of the short time available to us, this revised text was not discussed and might require further consideration.

Article 18

During our third meeting, the delegation of Jordan made the following suggestion for paragraph 2 of article 18:

> "Except for an offence under article 2, paragraph 1 (a), of this Convention committed against a protected civilian to which this Convention shall be applicable, the activities during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by this Convention."

The delegation of Jordan explained that its text sought to resolve the outstanding issues relating to article 18 of the convention. It was stressed that this proposal would reflect both the general consensus that attacks against civilians should be considered terrorist offences under any circumstance and the current stage of development of international humanitarian law regarding the actions of non-State actors during armed conflict. In its view, the proposed text would also create a clear delimitation between acts governed by international humanitarian law and acts covered by the comprehensive convention.

Some delegations welcomed the focus of the text proposed by Jordan. In this regard, they emphasized that substantive discussions should concentrate on article 18 and not on the preamble. These delegations reiterated their support for the proposal by the OIC.

Other delegations expressed their strong preference not to change the text of article 18 as proposed by the former coordinator and indicated their willingness to consider additional language in the preamble. These delegations also expressed reservations on the suggested language, noting that it was ambiguous, would create an overlap with international humanitarian law, narrowed the scope of article 2, paragraph 1 (a), to crimes committed against "protected persons" and would exclude a broad range of non-State actors from the scope of the convention.

Consolidated text

In bilateral consultations, several delegations noted that the lack of a consolidated text of the convention created practical difficulties for decision-making. They recalled that the introduction of a consolidated text, in the context of the negotiations on the International Convention for the Suppression of Acts of Nuclear Terrorism, had proved to be constructive. Consequently, in order to facilitate future negotiations, I have prepared a draft consolidated text of the whole comprehensive convention on international terrorism (see appendix II).

The main source for the draft consolidated text is the language contained in annexes I, II and III of the report of the Ad Hoc Committee established by General Assembly resolution 51/210 of 17 December 1996 on its sixth session.[a] I have added the draft preambular paragraph circulated at the last meeting of informal consultations, together with the former coordinator's draft article on the relationship between the convention and international humanitarian law (former article 18, now article 20), reproduced in annex IV of the Ad Hoc Committee's report. It should be noted that the articles have been renumbered in order to account for the additions and deletions made during the course of the negotiations. In addition, the consolidated text incorporates some minor drafting changes, of a technical nature, suggested by the Editorial Control Section of the Secretariat of the United Nations, in order to align the instrument with previously adopted conventions.

This text does not prejudice — in any way — the proposals made by delegations. It is understood that all proposals remain on the table until withdrawn by their sponsors and that "nothing is agreed until everything is agreed".

Conclusions

After these consultations, I am personally confident that we will be able to achieve a positive result by finalizing the convention during the sixtieth session of the General Assembly, as suggested by the Secretary-General.

I have also come to the conclusion that the idea of adding preambular language on the right of peoples for self-determination is highly promising. I believe it might be worthwhile for future negotiations to explore this option further. In this light, I would suggest that the latest revision of the draft preambular paragraph, circulated on 29 July 2005, be used as the basis for the next round of discussions.

Regarding the draft consolidated text (appendix II), it is my sincere hope that it will facilitate further discussions and serve as the basis for an agreement in the near future.

Finally, I would like to thank all delegations for their active participation and their constructive spirit during the informal consultations.

Notes

[a] *Official Records of the General Assembly, Fifty-seventh Session, Supplement No. 37* (A/57/37).

[b] General Assembly resolution 2625 (XXV), annex.

[c] See General Assembly resolution 2200 A (XXI), annex.

Appendix II

Draft comprehensive convention against international terrorism

Consolidated text prepared by the coordinator for discussion*

The States Parties to the present Convention,

Recalling the existing international treaties relating to various aspects of the problem of international terrorism, in particular the Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963, the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970, the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971, the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted in New York on 14 December 1973, the International Convention against the Taking of Hostages, adopted in New York on 17 December 1979, the Convention on the Physical Protection of Nuclear Material, adopted in Vienna on 26 October 1979, the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988, the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988, the Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991, the International Convention for the Suppression of Terrorist Bombings, adopted in New York on 15 December 1997, the International Convention for the Suppression of the Financing of Terrorism, adopted in New York on 9 December 1999 and the International Convention for the Suppression of Acts of Nuclear Terrorism, adopted in New York on 13 April 2005,

Recalling also the Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994,

Recalling further the Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 51/210 of 17 December 1996,

Deeply concerned about the worldwide escalation of acts of terrorism in all its forms and manifestations, which endanger or take innocent lives, jeopardize fundamental freedoms and seriously impair the dignity of human beings,

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* This consolidated text, except for paragraph 10 of the preamble and article 20, is taken from document A/57/37, annexes I, II and III, with minor editorial changes. Paragraph 10 of the preamble was circulated by the present coordinator on 29 July 2005. Article 20 reproduces the text proposed by the former coordinator for article 18, contained in document A/57/37, annex IV. It is understood that all other amendments and proposals remain on the table.

Reaffirming their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed, including those which jeopardize friendly relations among States and peoples and threaten the territorial integrity and security of States,

Recognizing that acts, methods and practices of terrorism constitute a grave violation of the purposes and principles of the United Nations, which may pose a threat to international peace and security, jeopardize friendly relations among States, hinder international cooperation and aim at the undermining of human rights, fundamental freedoms and the democratic bases of society,

Recognizing also that the financing, planning and inciting of terrorist acts are also contrary to the purposes and principles of the United Nations, and that it is the duty of the States Parties to bring to justice those who have participated in such acts,

Convinced that the suppression of acts of international terrorism, including those in which States are directly or indirectly involved, is an essential element in the maintenance of international peace and security and the sovereignty and territorial integrity of States,

Noting that the Convention relating to the Status of Refugees, signed at Geneva on 28 July 1951, and the Protocol relating to the Status of Refugees, done at New York on 31 January 1967, do not provide a basis for the protection of perpetrators of terrorist acts, and stressing the importance of the full compliance by the Parties to those instruments with the obligations embodied therein, including, in particular, the principle of non-refoulement,

Reaffirming that in accordance with the Charter of the United Nations, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Declaration of Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, all peoples have the right to self-determination, freedom and independence, and that those peoples that have been forcibly deprived of its exercise have the right to struggle to that end, in conformity with the relevant principles of the Charter and of the above-mentioned Declaration,*

Bearing in mind the necessity of respecting human rights and international humanitarian law in the fight against terrorism,

Realizing the need for a comprehensive convention against international terrorism,

Have resolved to take effective measures to prevent acts of terrorism and to ensure that perpetrators of terrorist acts do not escape prosecution and punishment by providing for their extradition or prosecution, and to that end have agreed as follows:

* It is understood that further consideration of this paragraph might be necessary.

Article 1

For the purposes of the present Convention:

1. "State or government facility" includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of a Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity or by employees or officials of an intergovernmental organization in connection with their official duties.

2. "Military forces of a State" means the armed forces of a State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security and persons acting in support of those armed forces who are under their formal command, control and responsibility.

3. "Infrastructure facility" means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewerage, energy, fuel, banking, communications, telecommunications and information networks.

4. "Place of public use" means those parts of any building, land, street, waterway or other location that are accessible or open to members of the public, whether continuously, periodically or occasionally, and encompasses any commercial, business, cultural, historical, educational, religious, governmental, entertainment, recreational or similar place that is so accessible or open to the public.

5. "Public transportation system" means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo.

Article 2

1. Any person commits an offence within the meaning of the present Convention if that person, by any means, unlawfully and intentionally, causes:

(a) Death or serious bodily injury to any person; or

(b) Serious damage to public or private property, including a place of public use, a State or government facility, a public transportation system, an infrastructure facility or to the environment; or

(c) Damage to property, places, facilities or systems referred to in paragraph 1 (b) of the present article resulting or likely to result in major economic loss;

when the purpose of the conduct, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2. Any person also commits an offence if that person makes a credible and serious threat to commit an offence as set forth in paragraph 1 of the present article.

3. Any person also commits an offence if that person attempts to commit an offence as set forth in paragraph 1 of the present article.

4. Any person also commits an offence if that person:

(a) Participates as an accomplice in an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(b) Organizes or directs others to commit an offence as set forth in paragraph 1, 2 or 3 of the present article; or

(c) Contributes to the commission of one or more offences as set forth in paragraph 1, 2 or 3 of the present article by a group of persons acting with a common purpose. Such contribution shall be intentional and shall either:

(i) Be made with the aim of furthering the criminal activity or criminal purpose of the group, where such activity or purpose involves the commission of an offence as set forth in paragraph 1 of the present article; or

(ii) Be made in the knowledge of the intention of the group to commit an offence as set forth in paragraph 1 of the present article.

Article 3

Where the present Convention and a treaty dealing with a specific category of terrorist offence would be applicable in relation to the same act as between States that are parties to both the present Convention and the said treaty, the provisions of the latter shall prevail.

Article 4

The present Convention shall not apply where the offence is committed within a single State, the alleged offender and the victims are nationals of that State, the alleged offender is found in the territory of that State and no other State has a basis under article 7, paragraph 1 or 2, of the present Convention to exercise jurisdiction, except that the provisions of articles 9 and 13 to 17 of the present Convention shall, as appropriate, apply in those cases.

Article 5

Each State Party shall adopt such measures as may be necessary:

(a) To establish as criminal offences under its domestic law the offences set forth in article 2 of the present Convention;

(b) To make these offences punishable by appropriate penalties which take into account the grave nature of these offences.

Article 6

Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of the present Convention are under no circumstances justifiable by considerations

of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

Article 7

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 2 of the present Convention when:

(a) The offence is committed in the territory of that State; or

(b) The offence is committed on board a vessel flying the flag of that State or an aircraft which is registered under the laws of that State at the time the offence is committed; or

(c) The offence is committed by a national of that State.

2. A State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed by a stateless person who has his or her habitual residence in the territory of that State; or

(b) The offence is committed wholly or partially outside its territory, if the effects of the conduct or its intended effects constitute or result in, within its territory, the commission of an offence set forth in article 2; or

(c) The offence is committed against a national of that State; or

(d) The offence is committed against a State or government facility of that State abroad, including an embassy or other diplomatic or consular premises of that State; or

(e) The offence is committed in an attempt to compel that State to do or to abstain from doing any act; or

(f) The offence is committed on board an aircraft which is operated by the Government of that State.

3. Upon ratifying, accepting, approving or acceding to the present Convention, each State Party shall notify the Secretary-General of the United Nations of the jurisdiction it has established under its domestic law in accordance with paragraph 2 of the present article. Should any change take place, the State Party concerned shall immediately notify the Secretary-General.

4. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 2 in cases where the alleged offender is present in its territory and it does not extradite that person to any of the States Parties that have established their jurisdiction in accordance with paragraph 1 or 2 of the present article.

5. When more than one State Party claims jurisdiction over the offences set forth in article 2, the relevant States Parties shall strive to coordinate their actions appropriately, in particular concerning the conditions for prosecution and the modalities for mutual legal assistance.

6. Without prejudice to the norms of general international law, the present Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 8

States Parties shall take appropriate measures, in conformity with the relevant provisions of national and international law, including international human rights law, for the purpose of ensuring that refugee status is not granted to any person in respect of whom there are serious reasons for considering that he or she has committed an offence set forth in article 2 of the present Convention.

Article 9

1. States Parties shall cooperate in the prevention of the offences set forth in article 2 of the present Convention by taking all practicable measures, including, if necessary and where appropriate, adapting their domestic legislation, to prevent and counter preparations in their respective territories for the commission, within or outside their territories, of those offences, including:

(a) Measures to prohibit the illegal activities of persons, groups and organizations that encourage, instigate, organize, knowingly finance or engage in the commission of offences set forth in article 2;

(b) In particular, measures to prohibit the establishment and operation of installations and training camps for the commission of offences set forth in article 2.

2. States Parties shall further cooperate in the prevention of the offences set forth in article 2, in accordance with their domestic law, by exchanging accurate and verified information and coordinating administrative and other measures taken as appropriate to prevent the commission of offences set forth in article 2, in particular by:

(a) Establishing and maintaining channels of communication between their competent agencies and services to facilitate the secure and rapid exchange of information concerning all aspects of offences set forth in article 2;

(b) Cooperating with one another in conducting inquiries, with respect to the offences set forth in article 2, concerning:

(i) The identity, whereabouts and activities of persons in respect of whom reasonable suspicion exists that they are involved in such offences;

(ii) The movement of funds, property, equipment or other instrumentalities relating to the commission of such offences.

3. States Parties may exchange information through the International Criminal Police Organization (Interpol) or other international and regional organizations.

Article 10

1. Each State Party, in accordance with its domestic legal principles, shall take the necessary measures to enable a legal entity located in its territory or organized under its laws to be held liable when a person responsible for the management or control of that legal entity has, in that capacity, committed an offence set forth in article 2 of the present Convention. Such liability may be criminal, civil or administrative.

2. Such liability is incurred without prejudice to the criminal liability of individuals having committed the offences.

3. Each State Party shall ensure, in particular, that legal entities liable in accordance with paragraph 1 of the present article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions. Such sanctions may include monetary sanctions.

Article 11

1. Upon receiving information that a person who has committed or who is alleged to have committed an offence set forth in article 2 of the present Convention may be present in its territory, the State Party concerned shall take such measures as may be necessary under its domestic law to investigate the facts contained in the information.

2. Upon being satisfied that the circumstances so warrant, the State Party in whose territory the offender or alleged offender is present shall take the appropriate measures under its domestic law so as to ensure that person's presence for the purpose of prosecution or extradition.

3. Any person regarding whom the measures referred to in paragraph 2 of the present article are being taken shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State of which that person is a national or which is otherwise entitled to protect that person's rights or, if that person is a stateless person, the State in the territory of which that person habitually resides;

(b) To be visited by a representative of that State;

(c) To be informed of that person's rights under subparagraphs (a) and (b) above.

4. The rights referred to in paragraph 3 of the present article shall be exercised in conformity with the laws and regulations of the State in the territory of which the offender or alleged offender is present, subject to the provision that the said laws and regulations must enable full effect to be given to the purposes for which the rights accorded under paragraph 3 of the present article are intended.

5. The provisions of paragraphs 3 and 4 of the present article shall be without prejudice to the right of any State Party having a claim to jurisdiction in accordance with article 7, paragraph 1 (c) or 2 (a), of the present Convention to invite the International Committee of the Red Cross to communicate with and visit the alleged offender.

6. When a State Party, pursuant to the present article, has taken a person into custody, it shall immediately notify, directly or through the Secretary-General of the United Nations, the States Parties which have established jurisdiction in accordance with article 7, paragraph 1 or 2, and if it considers it advisable, any other interested States Parties, of the fact that such person is in custody and of the circumstances which warrant that person's detention. The State which makes the investigation contemplated in paragraph 1 of the present article shall promptly inform the said

States Parties of its findings and shall indicate whether it intends to exercise jurisdiction.

Article 12

1. The State Party in the territory of which the alleged offender is present shall, in cases to which article 7 of the present Convention applies, if it does not extradite that person, be obliged, without exception whatsoever and whether or not the offence was committed in its territory, to submit the case without undue delay to its competent authorities for the purpose of prosecution, through proceedings in accordance with the laws of that State. Those authorities shall take their decision in the same manner as in the case of any other offence of a grave nature under the law of that State.

2. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceeding for which the extradition or surrender of the person was sought, and this State and the State seeking the extradition of the person agree with this option and other terms they may deem appropriate, such a conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 1 of the present article.

Article 13

Any person who is taken into custody or regarding whom any other measures are taken or proceedings are carried out pursuant to the present Convention shall be guaranteed fair treatment, including enjoyment of all rights and guarantees in conformity with the law of the State in the territory of which that person is present and applicable provisions of international law, including international human rights law and, in particular, the Standard Minimum Rules for the Treatment of Prisoners.

Article 14

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 2 of the present Convention, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

3. Each State Party may give consideration to establishing mechanisms to share with other States Parties information or evidence needed to establish criminal, civil or administrative liability pursuant to article 10 of the present Convention.

Article 15

None of the offences set forth in article 2 of the present Convention shall be regarded, for the purposes of extradition or mutual legal assistance, as a political offence or as an offence connected with a political offence or as an offence inspired by political motives. Accordingly, a request for extradition or for mutual legal assistance based on such an offence may not be refused on the sole ground that it concerns a political offence or an offence connected with a political offence or an offence inspired by political motives.

Article 16

Nothing in the present Convention shall be interpreted as imposing an obligation to extradite or to afford mutual legal assistance, if the requested State Party has substantial grounds for believing that the request for extradition for offences set forth in article 2 of the present Convention or for mutual legal assistance with respect to such offences has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin or political opinion or that compliance with the request would cause prejudice to that person's position for any of these reasons.

Article 17

1. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for the investigation or prosecution of offences under the present Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent; and

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

2. For the purposes of the present article:

(a) The State to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State from which the person was transferred;

(b) The State to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States;

(c) The State to which the person is transferred shall not require the State from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for the time spent in the custody of the State to which he or she was transferred.

3. Unless the State Party from which a person is to be transferred in accordance with the present article so agrees, that person, whatever his or her nationality, shall not be prosecuted or detained or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts or convictions anterior to his or her departure from the territory of the State from which such person was transferred.

Article 18

1. The offences set forth in article 2 of the present Convention shall be deemed to be included as extraditable offences in any extradition treaty existing between any of the States Parties before the entry into force of the present Convention. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be subsequently concluded between them.

2. When a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, the requested State may, at its option, consider the present Convention as a legal basis for extradition in respect of the offences set forth in article 2. Extradition shall be subject to the other conditions provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize the offences set forth in article 2 as extraditable offences between themselves, subject to the conditions provided by the law of the requested State.

4. If necessary, the offences set forth in article 2 shall be treated, for the purposes of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territory of the States that have established jurisdiction in accordance with article 7, paragraphs 1 and 2, of the present Convention.

5. The provisions of all extradition treaties and arrangements between States Parties with regard to offences set forth in article 2 shall be deemed to be modified as between States Parties to the extent that they are incompatible with the present Convention.

Article 19

The State Party where the alleged offender is prosecuted shall, in accordance with its domestic law or its applicable procedures, communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to the other States Parties.

Article 20

1. Nothing in the present Convention shall affect other rights, obligations and responsibilities of States, peoples and individuals under international law, in

particular the purposes and principles of the Charter of the United Nations, and international humanitarian law.

2. The activities of armed forces during an armed conflict, as those terms are understood under international humanitarian law, which are governed by that law, are not governed by the present Convention.

3. The activities undertaken by the military forces of a State in the exercise of their official duties, inasmuch as they are governed by other rules of international law, are not governed by the present Convention.

4. Nothing in the present article condones or makes lawful otherwise unlawful acts, nor precludes prosecution under other laws.

Article 21

States Parties shall carry out their obligations under the present Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

Article 22

Nothing in the present Convention entitles a State Party to undertake in the territory of another State Party the exercise of jurisdiction or performance of functions which are exclusively reserved for the authorities of that other State Party by the law in force in that State Party.

Article 23

1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which cannot be settled through negotiation within a reasonable time shall, at the request of one of them, be submitted to arbitration. If, within six months of the date of the request for arbitration, the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice, by application, in conformity with the Statute of the Court.

2. Each State may at the time of signature, ratification, acceptance or approval of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of the present article. The other States Parties shall not be bound by paragraph 1 of the present article with respect to any State Party which has made such a reservation.

3. Any State which has made a reservation in accordance with paragraph 2 of the present article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 24

1. The present Convention shall be open for signature by all States from ... to ... at United Nations Headquarters in New York.

2. The present Convention is subject to ratification, acceptance or approval. The instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. The present Convention shall be open to accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 25

1. The present Convention shall enter into force on the thirtieth day following the date of the deposit of the twenty-second instrument of ratification, acceptance, approval or accession with the Secretary-General of the United Nations.

2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the twenty-second instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the thirtieth day after the deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 26

1. A State Party may denounce the present Convention by written notification to the Secretary-General of the United Nations.

2. Denunciation shall take effect one year following the date on which such notification is received by the Secretary-General of the United Nations.

Article 27

The original of the present Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto by their respective Governments, have signed the present Convention.

Done at New York this ... of ... two thousand and five.